IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 1ST NOVEMBER 2006 / 10TH KARTHIKA 1928

WP(C).No. 25575 of 2006(T)

PETITIONER:

C.SURENDRAN, CLASS-IV OFFIER,
SUB TREASURY OFFICE, NEYYATTINKARA,
THIRUVANANTHAPURAM,
(NOW UNDER ORDER OF TRANSFER TO SUB TREASURY
OFFICE, PARASSALA).

BY ADV. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENTS:

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1. THE DIRECTOR OF TREASURIES,
THIRUVANANTHAPURAM.

2. THE DISTRICT TREASURY OFFICER,
KATTAKKADA.

3. THE SUB TREASURY OFFICER,
NEYYATTINKARA.

4. THE SUB TREASURY OFFICER,
PARASSALA.

5. SMT.M.L.SHEEJA,
CLASS-IV OFFICER,
SUB TREASURY OFFICE, NEYYATTINKARA,
(NOW UNDER ORDER OF TRANSFER TO SUB TREASURY
OFFICE, PARASSALA).

R1 TO 4 BY GOVERNMENT PLEADER SHRI. M.P.PRAKASH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 25575 OF 2006

Dated this the 1st November, 2006.

JUDGMENT

The petitioner is a Class IV Officer in the department of Treasury. He is due to retire from service in December 2007. He belongs to scheduled caste community. He had filed an application before the second respondent-District Treasury Officer requesting to transfer him from Sub Treasury Office, Parassala to Sub Treasury Office, Nettattinkara. The application submitted by the petitioner was considered and based on the facts and reasons stated in the office note leading to Ext.P5 order dated 13.9.2006, viz., that the petitioner belongs to scheduled caste community, that he is due to retire from service within 1 1/2 years, that the respondent No:5 had been working for more than three years in one station i.e Sub Treasury Office, Parassala, that her residence is not far away from Sub Treasury Office, Parassala, orders were issued by the second respondent transferring the petitioner from Sub Treasury Office, Parassala and posting him at Sub Treasury Office, Neyyattinkara vice the fifth respondent transferred from Sub Treasury, Neyyattinkara to Sub Treasury, Parassala. The petitioner was relieved pursuant to Ext.P5 order and he joined duty at Sub Treasury,

Neyyattinkara immediately thereafter.

2. The fifth respondent who was relieved from Sub Treasury, Neyyattinkara did not report for duty at Sub Treasury, Parassala until 23.9.2006 on which date Ext.P6 order impugned in this writ petition was passed by the second respondent. As per Ext.P6, the second respondent has cancelled Ext.P5 order and retransferred the petitioner from Sub Treasury, Neyyattinkara back to Sub Treasury, Parassala. The fifth respondent was reposted in the Sub Treasury, Neyyattinkara. It is contended that Ext.P6 order is vitiated for grave illegalities as also malafides and therefore liable to be set aside.

3. The fifth respondent though received notice from this Court has not chosen to enter appearance. The second respondent has filed counter affidavit. It is stated that Ext.P6 has been passed taking into consideration the problems faced by the fifth respondent, and on request made by her, supported by a medical certificate. The allegation that Ext.P6 was passed actuated by malafides and for extraneous considerations is denied in the counter affidavit.

4. According to the counsel for the petitioner the extreme haste shown by the second respondent in entertaining the application filed by the fifth respondent

on 23.9.2006 and passing Ext.P6 order as requested by her within few minutes of its receipt, if not earlier, and thereby cancelling Ext.P5 is sufficient to establish the undue interest shown by the second respondent to favour the fifth respondent. The second respondent has exercised the power vested in him unjustly and arbitrarily. No employee shall be allowed to have a feeling that he/she has an edge over another in the matter of access to the superior Officers who are duty bound to consider the competing claims of their subordinates dispassionately and without favouratism. There is no case for the second respondent that having regard to the guidelines issued by the Government in the matter of transfers and postings the petitioner is ineligible to get an order in the nature of Ext.P5. It is not disputed that the fifth respondent has completed the normal tenure of service in the Sub Treasury, Neyyattinkara. She is not eligible to claim the benefit of the guidelines or norms laid down by the Government or seek protection against orders of transfer. The contention of the second respondent is that the fifth respondent expressed her difficulties to attend the office at Parassala as she had to travel in three buses, that she had sustained a fracture injury in a motor accident and had been undergoing treatment, that her mother-in-law is

bedridden due to partial paralysis, that it will be convenient for her to travel in the scooter belonging to her husband as a pillion rider and reach the office without using any public conveyance and, therefore, Ext.P6 order was liable to be reconsidered.

5. I have gone through the relevant files produced for the perusal of this Court. It shows that the fifth respondent reported for duty at Parassala only on the forenoon of 23.9.2006. She appears to have submitted an application dated 23.9.2006 through proper channel(?) addressed to the second respondent. But the application said to have been submitted through proper channel does not form part of the files in which the impugned order was passed. What is available on record is the advance copy filed by the petitioner directly before the second respondent. On 23.9.2006 itself the draft proceedings were drawn up and, within no time, the same has been approved by the second respondent. The handwritten copy of the proceedings show that the request made by the fifth respondent on 23.9.2006 was inducted subsequently just above the words "order No: A2/600/06 dated 23.9.2006." The ink and the pen used for writing the draft proceedings and the ink used for writing the words "request put in by Smt. M.L.Sheeja, Class IV Officer dated 23.9.2006" are

different. It evidently appears to be an entry made subsequently, in haste, in the space reserved for that purpose. The inference, reasonable in the circumstances is that, even before the advance copy of the petition filed by the fifth respondent on 23.9.2006 reached the office of the second respondent, proceedings were made ready so that the gap alone need be filled up and Ext.P6 order could forthwith be issued. This is a circumstance which points towards the abuse of power and the element of extraneous consideration that vitiate Ext.P6 order.

6. Even assuming that the fifth respondent was entitled for transfer back to Sub Treasury, Neyyattinkara, the undue haste shown by the second respondent to cancel Ext.P5 order or replace it by Ext.P6, even without waiting for the proper representation to reach his office appears to be not in the interest of the administration. The petitioner is justified in contending that the second respondent ought not to have issued Ext.P6 even before ascertaining the truth of the facts stated in the application filed by the fifth respondent on 23.9.2006.

7. The inference is irresistible that the power was exercised to unduly favour the fifth respondent and to the prejudice of the petitioner. The second respondent who was fully satisfied about the legitimacy and just nature of the

request of the petitioner in terms of the guidelines issued by the Government and had passed Ext.P5 ought not to have upset the same within a few minutes of the fifth respondent filing a representation to cancel Ext.P5 and pass orders in her favour. I am satisfied that the petitioner has made out a case for interference and for quashing Ext.P6. Ext.P6 is vitiated for malafides, and therefore, set aside. The result is that Ext.P5 revives.

8. The second respondent is directed to implement Ext.P5 without any delay. The petitioner shall be relieved from the Sub Treasury, Parassala and the fifth respondent shall be relieved from the Sub Treasury, Neyyattinkara so that the petitioner as well as the fifth respondent shall report for duty in the respective Sub Treasuries as per Ext.P5 order. The petitioner shall produce a copy of this judgment before the second respondent for due compliance. Writ petition is allowed as above.

K.K.DENESAN
Judge

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